IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11101 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI SOMABHAI BRAHMBHATT

Versus

DIST. MAGISTRATE

Appearance:

1. Special Civil Application No. 11101 of 2001

MR NM KAPADIA for Petitioner No. 1

GOVERNMENT PLEADER for Respondents No. 1,3-4

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/01/2002

ORAL JUDGEMENT

1. The petitioner came to be detained under Prevention of Black Marketing and Supplies of Essential

Commodities Act, 1980 (PBM Act for short), by virtue of order passed by the District Magistrate, Sabarkantha at Himmatnagar on November 4, 2001 in exercise of power under Section 3 of the said Act.

2. The petitioner seeks to challenge the said order of detention in this petition under Article 226 of Constitution of India on various grounds stated therein.

3. The grounds of detention indicate that the petitioner was found to be involved in activities which were found to be detrimental to smooth supply of essential commodities like wheat, rice and kerosene. It was also found that his activities were such which would lead to black marketing of such commodities. The detaining authority observed that resorting to ordinary law would not be sufficient to immediately prevent the detenu from pursuing his illegal activities and, therefore, resorting to detention under the PBM Act is the only efficacious remedy and he, therefore, resorted to the same by the said order. The learned Counsel, Mr.Kapadia, appearing for the petitioner has pressed into service the only ground of absence of grounds of detention at the time of passing of the order of detention. He submitted that since there were no grounds for detention, the order would be vitiated.

3.1 In order to substantiate his contention, Mr.Kapadia submitted that the order in question was passed on November 4, 2001, whereas the grounds of detention were formulated on November 7, 2001. There was absence of grounds of detention at the time of passing of the order and, therefore, the order can be quashed. In support of his contention, he relied on the decision in the case of "Parshottam Dahyabhai Chunara v. State of Gujarat & Ors.", as reported in 29(1) GLR, 342. He urged that the petition may, therefore, be allowed. Mr.Kapadia placed on record copies of communications and order received by the detenu from the District Magistrate and the Government, which are taken on record.

4. The learned AGP, Mr.Joshi has opposed this petition.

5. Having regard to the above said contentions, Mr.Joshi, after going through the file made available to him by the Office of the Food, Civil Supplies and Consumer Affairs Department, in all fairness, submitted that factually it cannot be denied that the grounds of detention were formulated on November 7, 2001. Differently put, the grounds of detention were

nonexistent when the order of detention was passed on November 4, 2001. In the decision relied on by the learned Counsel, Mr.Kapadia, the Division Bench of this Court observed that the grounds of detention must be in existence on the day of order of detention and if the grounds are recorded subsequently, the order of detention would be bad in law. This judgement would be squarely applicable to the facts and circumstances of the present case, which would result into allowing this petition by quashing the order in question.

6. The petition is allowed. The order passed by the District Magistrate, Sabarkantha on 4-11-2001, detaining the petitioner, Mahendrabhai Somabhai Brahmbhatt is hereby quashed and set aside. The petitioner Mahendrabhai Somabhai Brahmbhatt be released from detention forthwith, if not required in any other case. Rule is made absolute. No costs. Direct service is permitted.

10-1-2002 (A.L.Dave, J.)

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